86-908

No.

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

UNITED STEELWORKERS OF AMERICA, AFL-CIO-CLC,
Petitioner,

v.

THARON RAWSON, INDIVIDUALLY AND AS GUARDIAN AD LITEM FOR SETH RAWSON AND CINDY RAWSON; BERNIECE JOHNSON, INDIVIDUALLY AND AS GUARDIAN AD LITEM FOR MICHAEL WAYNE JOHNSON, RUTH ELLEN JOHNSON AND JOHN RUSSEL JOHNSON; LAURA DUNBAR, AS GUARDIAN AD LITEM FOR RICKINA ROSSITER AND GLEN ROSSITER, JR.; AND MARY WOOD, AS GUARDIAN AD LITEM FOR LESLIE D. WOOD,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF IDAHO

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QUESTIONS PRESENTED

1. Does Section 301 of the Labor Management Relations Act of 1947, 29 U.S.C. § 185, preempt state tort law from defining the legal duties that arise out of a collective bargaining agreement?

2. Does the federal duty of fair representation preempt state tort law from imposing additional duties on a union with respect to the manner in which the union performs its functions as exclusive bargaining representative?

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Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF IDAHO

The United Steelworkers of America, AFL-CIO-CLC, hereby petitions for a writ of certiorari to enable this Court to review the judgment of the Supreme Court of Idaho in *Rawson, et al. v. United Steelworkers of America,* Case No. 15338, entered on September 4, 1986.

OPINIONS BELOW

The opinion of the Idaho Supreme Court is reported at 726 P.2d 742. That opinion is reproduced as Appendix A (1a-36a). An earlier opinion, which was issued on February 24, 1986, and later withdrawn by the Idaho

Supreme Court upon rehearing, is reproduced as Appendix B (37a-76a). The opinion of the District Court of the First Judicial District of the State of Idaho is unreported. It is reproduced in the Appendix to this petition as Appendix C (77a-94a).

The appendix also contains two decisions that were rendered at an earlier stage of proceedings in this case. The Idaho Supreme Court's opinion of September 13, 1979, is reported at 100 Idaho 523, 620 P.2d 21, and is reproduced as Appendix D (95a-147a). The Idaho trial court's opinion of January 29, 1976, is unreported; it is reproduced as Appendix E (148a-151a).

JURISDICTION

The opinion and judgment of the Supreme Court of Idaho were issued on September 4, 1986. The federal questions presented in this petition were properly raised and were decided by both the trial court and the Idaho Supreme Court (18a-25a; 89a-94a). This Court has jurisdiction to review the judgment below by certiorari pursuant to 28 U.S.C. § 1257(3).

STATUTORY PROVISIONS INVOLVED

Section 301 of the Labor Management Relations Act of 1947, 29 U.S.C. § 185, provides in pertinent part as follows:

> Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

Section 9(a) of the National Labor Relations Act of 1935, as amended, 29 U.S.C. § 159(a), provides in pertinent part:

> Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment. . . .

STATEMENT OF THE CASE

The Sunshine Mining Company operates a silver mine in Kellogg, Idaho, known as the Sunshine Mine. It is the largest silver mine in the United States. The United Steelworkers of America ("the union") is the exclusive bargaining representative of the miners employed by Sunshine.

On May 2, 1972, a major fire occurred underground in the Sunshine Mine. Ninety-one miners died from asphyxiation or carbon monoxide poisoning. After a thorough investigation, the United States Bureau of Mines concluded that the most likely cause of the fire was spontaneous combustion of accumulated timbers and debris in an area that had long before been worked out and walled off from the rest of the mine.

The families of the deceased miners collected workmen's compensation payments under Idaho law. A number of the families then sought to collect additional damages by suing various third parties, including the United States Bureau of Mines, the State of Idaho, and the manufacturers of certain materials and equipment that had been used in the mine. *See House v. Mine Safety Appliances Co.*, 573 F.2d 609 (9th Cir. 1978), *cert. denied*, 439 U.S. 862 (1978); 104a-105a. Four of the families sued the union in the state courts of Idaho, thus initiating the lawsuit that is the subject of this petition.[1]

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[1] The four respondents, all widows of deceased miners or guardians of minor children of the deceased miners, sued variously in

The basis of respondents' claims against the union is a provision of the collective bargaining agreement between the Sunshine Mining Company and the union that was in effect at the time of the fire. The provision, Article IX, entitled "Safety and Health," is reproduced in full as Appendix F to this petition (152a-154a). The article began by acknowledging the employer's responsibility for the safety and health of its employees: "The Company shall continue to make reasonable provisions for the safety and health of its employees at the plant during the hours of their employment" (152a). The article provided for a safety committee composed of six members, three designated by the employer and three designated by the union. It defined the function of the safety committee as "to advise with the Plant Manager concerning safety and health matters" (153a). The article permitted the union to designate a representative to "accompany" the company's safety engineer once each month on "a tour of a section of the mine," with the results of the tour to be considered at the next meeting of the safety committee (154a). A union member of the committee was also permitted to "accompany" the State Mine Inspector on any State inspection made at the property (*id.*). The agreement made clear that the safety committee had no authority to change safety practices in the mine; it could only submit "advices," "suggestions [and] recommendations" to the plant manager "for his consideration and for such action as he may consider consistent with the Company's responsibility . . . ." (153a-154a). The union did not even have recourse to the grievance procedure unless a majority of the "entire" safety committee (necessarily including at least one management member) had concurred in a recommendation that "need[ed] action immediately" but was not carried out

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their individual capacities and on behalf of the children. The capacity in which each respondent brings the suit is identified in the caption of the petition.

(154a). The agreement contained no other provisions regarding safety and health.

Respondents alleged that the union was negligent in representing the employees under this article of the collective bargaining agreement. Specifically, the complaint alleged that the union

> undertook to act as accident prevention representative and enforcer of the Company-Union agreement and did it negligently, to wit:
>
> A. It misrepresented its safety concern and expertise to the rank and file.[2]
>
> B. It failed to develop adequate safety programs for its union membership.
>
> C. It undertook to provide representatives who inspected and pretended to enforce the contractual accident prevention clauses, and did so negligently, to wit:
>
> (1) It failed to require mine evacuation on first evidence of smoke underground;
>
> (2) It failed to require fire drills;
>
> (3) It failed to require personal protective equipment;
>
> (4) It failed to require adequate protection against spontaneous combustion of discarded timbers underground;
>
> (5) It failed to require adequate emergency egress from the mine.[3]

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[2] The misrepresentation part of this claim has been rejected by the Idaho courts on state-law grounds. See *infra*, note 3.

[3] Respondents asserted one other claim under state law—a fraud claim based on allegations that the union had falsely represented that it possessed expertise on safety matters and that the union had thus lulled the miners into reliance on its safety "inspections." Petitioner was granted summary judgment on that claim in the Idaho courts on state-law grounds (4a-6a).

At an early stage of the proceedings, the union moved for dismissal, or in the alternative, for summary judgment on the ground of federal preemption. In 1976 the Idaho district court granted the motion for summary judgment (148a). The court ruled that respondents' claims were based entirely on the manner in which the union had carried out its function of representing its members, that the federal duty of fair representation exclusively defined the terms on which a union could be held liable in that capacity, and that negligence was not a permissible ground for such liability (151a). Accordingly, the district court dismissed the complaint (*id.*)

On appeal, the Supreme Court of Idaho reversed (95a).[4] Stating the question before it as whether "the jurisdiction of the courts of Idaho to hear and adjudicate plaintiffs-appellants' claim against the union is preempted and superseded by the pervasive federal regulation of labor law and [whether] such matters are committed exclusively to the primary jurisdiction of the National Labor Relations Board" (97a), the court's opinion answered that question in the negative (98a-104a). A "special concurrence" (joined by three members of the five-member court) stated that "the precise nature of the legal issues raised by the appellants' wrongful death action is not entirely clear at the present procedural posture of the case," and "a final decision whether the wrongful death action against the respondent union is preempted by federal labor laws must therefore await a full factual development of the legal issues raised under our state tort law" (143a). The union's petition for certiorari was denied. *United Steelworkers of America v. Dunbar*, 446 U.S. 983 (1980).

[4] The Idaho Supreme Court's opinion is reproduced in full as Appendix D. Most of that lengthy opinion is devoted to respondents' claims against the State of Idaho. The portion of the majority opinion that addresses the claims against the union appears at 97a-104a; a special concurring opinion on union liability appears at 142a-143a.

On remand, after completion of extensive discovery in the trial court, the union again moved for summary judgment, arguing that under both Idaho tort law and federal labor law the union could not be held liable on the undisputed facts. In 1983 the trial court again granted the union's motion, ruling primarily that under Idaho tort law the union could not be held liable for conditions it did not create, where the union had no power to require the abatement of safety hazards and where its activities under the collective bargaining agreement indisputably had not made conditions in the mine more dangerous (85a-88a). In the alternative, on the issue of federal preemption, the trial court ruled that the summary judgment record made it clear that respondents' negligence claims against the union were unambiguously based on the union's "representational duties" and "the manner in which the Union carried out the collective bargaining agreement" (91a-92a). The trial court therefore "respectfully request[ed] the [Idaho] Supreme Court to re-examine its holding that this case is not pre-empted by federal labor law" (94a).

The Idaho Supreme Court initially affirmed on principles of Idaho tort law, without reaching the issue of federal preemption (41a-43a). Respondents then petitioned for rehearing, and the Idaho Supreme Court reversed the trial court's dismissal and reinstated respondents' claims (2a-4a).[5] In addressing the Idaho tort law issues, the court assumed that the safety and health article meant that the union "had contracted to inspect . . . the mine" (18a). The court accordingly characterized the union's exercise of its contractual right to "accompany" the employer's safety engineer or the state inspector as "in fact, inspect[ing] the mine" (18a).

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[5] The Idaho Supreme Court affirmed dismissal of respondents' separate claim based on alleged fraud. *See supra*, note 3.

And, on these premises, the Idaho Supreme Court concluded that under Idaho law the asserted failures of the union to discover dangerous conditions or to ask the employer to improve those conditions could, if proved negligent, constitute an actionable tort.

The Idaho Supreme Court then held that respondents' claims were not preempted by federal labor law. Although the court acknowledged that "the nature and scope of the Union's duty" were defined by the safety provisions of the collective bargaining agreement (22a), the court distinguished this Court's decision in *Allis-Chalmers Corp. v. Lueck*, —— U.S. ——, 105 S.Ct. 1904 (1985), on the ground that "the provisions of the collective bargaining agreement do not require interpretation" (22a). The court also rejected the union's argument that the federal duty of fair representation exclusively defines the grounds upon which a union can be held liable for the manner in which it carries out the function of representing its members (19a).

In concluding that federal law does not preempt respondents' claims, the Idaho Supreme Court relied heavily on the Eleventh Circuit's decision in *Hechler v. International Bhd. of Electrical Workers*, 772 F.2d 788 (11th Cir. 1985)—a decision from which this Court has granted certiorari, No. 85-1360 (May 19, 1986). The court quoted extensively from the *Hechler* opinion, stated that the *Hechler* court "correctly analyzed the non-applicability of the preemption doctrine to cases of this nature" (22a), and concluded: "We agree with the *Hechler* analysis" (24a).[6]

One justice dissented on the issue of federal preemption. Justice Bakes wrote that based upon the record before the court, *Allis-Chalmers v. Lueck, supra*, definitively

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[6] Indeed, the Idaho Supreme Court chided the *Hechler* court for qualifying its decision: "The *Hechler* court blinked and waffled shamefully by its final qualifying paragraph" (22a).

required a conclusion that respondents' claims are preempted:

> Any duty which the union owed to its members, and which might form the basis of the plaintiffs' negligence claims, arose through the terms of the collective bargaining agreement. It was the collective bargaining agreement which provided for the formation and membership of the Safety Committee and set forth the duties of the Safety Committee. Whether the terms of the collective bargaining agreement imposed a duty on the union or merely gave the union the right to participate in the selection of the safety committee is a question "inextricably intertwined with consideration of the terms of the labor contract." [*Allis-Chalmers*, 105 S.Ct. at 1912]
>
> . . . Through the negotiation process, the union and the company worked out the collective bargaining agreement which not only outlined the union's responsibilities in regard to the Safety Committee, but also limited the union's right to interfere in the operation of the mine. Any duty which the union had to its members to preserve safe conditions within the mine could only be fulfilled through the terms of the collective bargaining agreement. Thus, because consideration of issues related to the union's duty is inextricably intertwined with consideration of the collective bargaining agreement, we cannot ignore the [United States] Supreme Court's mandate.

(32a-33a). Justice Bakes further observed that under federal law the duty of fair representation exclusively defines the union's responsibilities in representing its members. Because "due care" is not part of that duty and mere negligence does not constitute a breach, Justice Bakes concluded that respondents' negligence claims are also preempted for this reason (34a).

REASONS FOR GRANTING THE WRIT

This petition presents the same questions that are pending before this Court in *Electrical Workers v. Hechler*, No. 85-1360. Those questions are important issues of federal law that merit review by this Court, as reflected by the Court's decision to grant certiorari in *Hechler*. This petition should be held until *Hechler* is decided, and then should be resolved in accordance with the decision there. If for any reason the Court does not reach or decide these important questions in *Hechler*, the Court should grant the writ of certiorari in this case.[7]

1. Like *Hechler*, the claims in this case involve both the interpretation of a collective bargaining agreement, and a determination of the scope of a union's representational duties. Like *Hechler*, the questions here are whether these issues must be determined according to the principles of federal labor law.

In this case, as in *Hechler*, it is the employer who has the responsibility under state law to provide a safe workplace.[8] The union has no independent duty under state

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[7] The issues raised by the judgment below are also related to the question presented in *Caterpillar, Inc. v. Williams*, No. 86-526, *cert. granted*, 55 U.S.L.W. 3347, 3348 (Nov. 17, 1986):

> Are state law causes of action completely preempted by § 301 of Labor Management Relations Act, or otherwise within the scope of § 301, thus permitting removal, where (1) resolution of state claims requires reference to and interpretation of collective bargaining agreement, and (2) plaintiff, who is member of bargaining unit and covered by collective bargaining agreement, contends that he was wrongfully discharged because he was satisfactorily performing bargaining unit work, and because prior to entering bargaining unit he negotiated individual employment contract that entitled him to continued employment on terms and conditions different from those set forth in collective bargaining agreement?

[8] *See Deshazer v. Tompkins*, 89 Idaho 347, 404 P.2d 604, 608 (1965); *Otto v. Mell*, 94 Idaho 109, 482 P.2d 84, 86 (1971).

law to police the employer's compliance with its safety responsibilities, nor could the state impose such a duty. The only affirmative duty the union could have to address the safety of the employer's workplace is one arising from a contract, or one arising from the federal duty of fair representation. In either case, the question would be one of federal law.

The contract in question here is the collective bargaining agreement between the employer and the union. Whether the union has an affirmative duty to discover and report upon the employer's safety defaults depends upon interpretation of the safety and health article of that agreement—in particular, upon interpretation of the portions of the article establishing (1) an advisory safety committee, with union as well as management members, and (2) a limited right for a union member of that committee to "accompany" Sunshine's safety engineer on "tours," and the Idaho state inspector on "inspections," of the mine (154a).

The complaint on its face makes clear that the plaintiffs' claims are predicated on this contract, and on the union's duty as representative of the employees to enforce this contract. Thus, the complaint states: the union "undertook to act as accident prevention representative and enforcer of the Company-union agreement and did it negligently." Complaint, quoted *supra*, at 5. In particularizing this allegation of "negligence," the complaint goes on to allege a series of acts that the union "*failed*" to take: "[i]t failed to develop adequate safety programs for its union membership"; "[i]t failed to require mine evacuation on first evidence of smoke underground"; "[i]t failed to provide fire drills"; "[i]t failed to require adequate protection against spontaneous combustion of discarded timbers"; "[i]t failed to require adequate emergency egress from the mine." *Id.*

The complaint alleged only these failures to take affirmative action, all of which assume that the union had a duty to act. The complaint did not allege a single in-

stance where, absent such a duty to act, the union had not exercised due care. And, after extensive discovery, the plaintiffs were still unable to assert a single instance where—assuming the contract did not place upon the union a duty to act—the union had not exercised due care.[9]

On this record, the trial court concluded (91a-92a):

> No matter how the plaintiffs couch their arguments, they are attempting to hold the defendant liable for conduct of an advisory safety committee created and defined by the collective bargaining agreement. The plaintiffs are complaining about the manner in which the Union carried out the collective bargaining agreement, essentially saying the Union advisory committee should have done more. This is obviously a question of the Union's representational duties and these representational duties are governed by the National Labor Relations Act.

The Idaho Supreme Court reached a different conclusion only by assuming that in the safety and health article the union had "contracted to inspect . . . the mine" (18a). Based on this construction of the contract, the Idaho Supreme Court characterized the union's exercise of its right to have a member "accompany" the employer's safety engineer or the state inspector as "in fact, inspect[ing] the mine" (18a). And, given the predicate of the contractual duty to inspect, the Idaho Supreme Court was able to characterize the union's alleged failure to discover and report safety hazards as a failure to exercise due care in the conduct of an inspection. Thus, after listing a number of safety hazards alleged by the respondents, the Idaho Supreme Court stated (17a):

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[9] After discovery had been closed, plaintiffs attempted to resist the union's motion for summary judgment by asserting two additional failures to take affirmative action: the union's alleged failure to bargain for stricter safety provisions in the collective bargaining agreement; and the union's alleged failure to hire safety experts to serve as the union representatives on the safety committee (4a, 92a).

> The Miners contend that most of these deficiencies could have been observed, and should have been observed, in the course of a reasonable inspection and, further, that recommendations could have, and should have, been made with regard to these deficiencies. A reasonable inference which the trial court should have drawn in favor of the miners is that the inspecting personnel were negligent in not seeing and reporting some of those conditions.

The Idaho Supreme Court went on succinctly to state what it deemed to be the source and the nature of the unpreempted state law claims against the union (18a) (emphasis removed):

> Because the Union, pursuant to the provisions of the collective bargaining agreement, had contracted to inspect, and, in fact, inspected the mine, it owed the (minimal) duty to its members to exercise due care in inspecting and reporting the findings of its inspection.

By assuming the answer to the question whether the collective bargaining agreement placed a duty to inspect upon the union, the Idaho Supreme Court did not and could not remove the questions of federal preemption from this case. If the safety and health provision of the collective bargaining agreement must be interpreted according to the principles of federal labor law incorporated in § 301, the Idaho Supreme Court did not do so. Likewise, if the obligations of a union to represent its members in obtaining improved safety conditions are defined by the federal duty of fair representation, rather than by state tort law, the Idaho Supreme Court applied the wrong standard to the union's asserted failures to act.

2. This action thus presents the same two preemption questions that are presented in *Hechler*.

The first question is whether under *Allis-Chalmers Corp. v. Lueck*, *supra*, § 301 of the Labor Management Relations Act preempts state tort law from defining the

legal obligations that arise from a collective bargaining agreement. This Court held in *Lueck* that the preemptive force of § 301 extends not only to the state law of contracts but also to the state law of torts, where the tort duty imposed does not "exist independently" of a collective bargaining agreement, 105 S.Ct. at 1912, but instead "intrinsically relates to the nature and existence of the contract," *id.* at 1914. This is just such a case.

Although the Idaho Supreme Court attempted to distinguish *Lueck* on the ground that the collective bargaining agreement between the union and Sunshine needed no interpretation, the court, as already discussed, in fact made assumptions about the obligations created by the contract—and it made those assumptions without regard to the principles of federal labor policy that are intended to govern interpretation of collective bargaining agreements. *See id.* at 1910. The majority assumed—and made this assumption the cornerstone of the duty they found—that the union had "contracted to inspect . . . the mine" (18a), although the agreement merely allowed the union to name half of the advisory safety committee and to send a representative to "accompany" management's safety engineer on a monthly tour of some part of the mine and to "accompany" the Idaho mine inspector on his periodic inspections (pp. 4-5, *supra*; 152a-154a). Justice Bakes argued in his dissent that the collective bargaining agreement did not clearly answer the question whether it "imposed a duty on the union or merely gave the union the right to participate" (32a-33a). Thus, here, as in *Lueck*, "the extent of [the] duty ultimately depends upon the terms of the agreement between the parties" and, as a consequence, the extent of the duty is "tightly bound with questions of contract interpretation that must be left to federal law." 105 S. Ct. at 1914.

The second question presented both in *Hechler* and in this petition is the preemptive effect of the duty of fair representation. That duty provides a second source of

federal preemption in both cases. The duty of fair representation defines the obligations of a union in discharging its functions as exclusive bargaining representative under the National Labor Relations Act. It displaces state law to that extent, and state law is forbidden to impose different or additional duties on a union in respect to how it performs that representational function. *E.g., Vaca v. Sipes*, 386 U.S. 171, 177 (1967). When a complaint alleges, as this one does, that a union performed its representational duties negligently, the sufficiency of that complaint must be judged under federal law, as the union in *Hechler* argues. Brief for Petitioner in No. 85-1360, at 21-28.

3. As this Court's order granting certiorari in *Hechler* reflects, these issues are important and merit the attention of this Court. There is a square conflict among the federal circuits on the application of *Lueck* to cases that attempt to apply a state-law duty of due care to a union's enforcement of the safety article of a collective bargaining agreement. The Eleventh Circuit in *Hechler* held that such a duty can be imposed, and the Idaho Supreme Court agreed in this case. The Sixth Circuit ruled precisely to the contrary in *Michigan Mutual Ins. Co. v. United Steelworkers of America*, 774 F.2d 104 (6th Cir. 1985). Similarly, on the fair representation question, the decision of the Idaho Supreme Court conflicts with a decision of the First Circuit Court of Appeals, which held in *Condon v. Local 2944, United Steelworkers of America*, 683 F.2d 590, 595 (1st Cir. 1982), that the duty of fair representation preempts the imposition of a state-law duty of due care on a union "conducting safety inspections" pursuant to its representational duties under a collective bargaining agreement.

Recent years have seen increasingly frequent attempts of employees injured on the job to sue unions for alleged negligence in performing (or failing to perform) safety inspections under collective bargaining agreements. Over 60 percent of collective bargaining agreements covering

manufacturing employers contain provisions establishing a joint labor-management safety committee.[10] Because workers' compensation awards generally are the exclusive means by which an employee injured on the job may recover from his employer, and because such awards are very limited in comparison to jury awards in tort actions, it has become almost commonplace for an injured worker to sue his union in hopes of recovering damages that he cannot recover from the employer.[11] These actions create a significant, and frequently recurring, problem for labor-management relations. Among other things, the prospect of uncontrolled tort liability gives unions a strong incentive *not* to bargain for safety committees or safety clauses in their collective bargaining agreements. Such a result would "not serve the interest of [employees] and would retard rather than advance the goals of the National Labor policy." *Bryant v. United Mine Workers*, 467 F.2d 1, 5-6 (6th Cir. 1972), *cert. denied*, 410 U.S. 930 (1973).

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[10] Bureau of National Affairs, *Basic Patterns in Union Contracts*, at 127 (11th ed. 1985).

[11] *See, e.g., Condon v. Steelworkers Local 2944*, 683 F.2d 590 (1st Cir. 1982); *Bryant v. Mine Workers*, 467 F.2d 1 (6th Cir. 1972), *cert. denied*, 410 U.S. 930 (1973); *Pockalny v. Elwell Parker Elec. Co.*, 608 F. Supp. 570 (W.D.N.Y. 1985); *Preisler v. Steelworkers*, No. N-83-159 (D. Conn., Feb., 24, 1984); *Burgess v. Allendale Mut. Ins. Co.*, 111 L.R.R.M. 2997 (S.D. Ga. 1982); *Mahoney v. Chicago Pneumatic Tool Co.*, 111 L.R.R.M. 2839 (W.D. Mich. 1982); *Wilson v. United Mine Workers*, Cv. No. 78-G-1362-S (N.D. Ala., June 3, 1980); *Globig v. Johns-Manville Sales Co.*, 486 F. Supp. 735 (E.D. Wis. 1980); *Hartsfield v. Seafarers Int'l Union*, 427 F. Supp. 264 (S.D. Ala. 1977); *House v. Mine Safety Appliances Co.*, 417 F. Supp. 939 (D. Idaho 1976); *McColgan v. Mine Workers*, 124 Ill. App.3d 825, 464 N.E.2d 1166 (1984), *cert. denied*, 469 U.S. 1051 (1985); *Helton v. Hake*, 564 S.W. 2d 313 (Mo. App.), *cert. denied*, 439 U.S. 959 (1978); *Brooks v. New Jersey Manufacturers Ins. Co.*, 170 N.J. Super. 20, 405 A.2d 466 (1979), *certif. denied*, 81 N.J. 413, 408 A.2d 806; *Carollo v. Forty-Eight Insulation, Inc.*, 252 Pa. Super. 422, 381 A.2d 990 (1977); *Gerace v. Johns-Manville Corp.*, 95 L.R.R.M. 3282 (Pa. Ct. C.P. 1977); *Higley v. Disston*, 92 L.R.R.M. 2443 (Wash. Super. 1976).

4. Because this petition presents the same questions that are before the Court in *Hechler*, it should be held pending the disposition of that case, and then should be resolved in accordance with the judgment in *Hechler*. If for any reason the Court does not reach or decide these questions in *Hechler*, the Court should grant this petition for certiorari. The issues of federal preemption are squarely and necessarily presented in this case, and they are important issues of federal law that have produced conflicting interpretations. Those issues should be resolved by this Court.

CONCLUSION

For the foregoing reasons, this petition should be held pending *Electrical Workers v. Hechler*, No. 85-1360, and then should be resolved in accordance with the judgment in that case. If for any reason the Court in *Hechler* does not reach or decide the questions that are presented in this petition, this petition for writ of certiorari should be granted.

Respectfully submitted,

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